

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA-EASTERN DIVISION

SYLVIA CEBALLOS,) No. CV 13-1583-AS
)
 Plaintiff,)
v.)) MEMORANDUM OPINION
)
CAROLYN W. COLVIN,)
Acting Commissioner of the)
Social Security Administration,)
)
 Defendant.)
)
)

PROCEEDINGS

On September 11, 2013, Plaintiff filed a Complaint seeking review of the denial of her application for Social Security benefits. (Docket Entry No. 1.) The parties consented to proceed before a United States Magistrate Judge. (Docket Entry Nos. 8, 10.) On January 10, 2014, Defendant filed an Answer to the Complaint along with the Administrative Record ("A.R."). (Docket Entry Nos. 13, 14.) The parties filed a Joint Stipulation ("Joint Stip.") on July 2, 2014, setting forth their respective positions on Plaintiff's claim.

1 (Docket Entry No. 20.) The Court has taken the matter under
2 submission without oral argument. See C.D. Cal. L.R. 7-15.
3

4 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
5

6 On February 1, 2012, Plaintiff filed an application for
7 Supplemental Social Security Income ("SSI"). (A.R. 142-47.)
8 Plaintiff alleged an inability to work since February 11, 2010 due to
9 severe depression, paranoia, suicidal tendencies, and homicidal
10 tendencies. (A.R. 166.) On April 2, 2013, the Administrative Law
11 Judge ("ALJ"), Mason D. Harrell, Jr., examined the record and heard
12 testimony from Plaintiff and vocational expert Mary Jesko. (A.R. 23-
13 42.) On June 24, 2013, the ALJ issued a decision denying Plaintiff's
14 application. (A.R. 6-22.) The ALJ determined that Plaintiff had the
15 following severe impairments: depression and obesity. (A.R. 11.)
16 However, the ALJ found that Plaintiff was not disabled within the
17 meaning of the Social Security Act. (See A.R. 13-18.)
18

19 Plaintiff requested that the Appeals Council review the ALJ's
20 decision. (A.R. 14-15.) The request was denied on July 19, 2013.
21 (A.R. 1-4.) The ALJ's decision then became the final decision of the
22 Commissioner, allowing this Court to review the decision. See 42
23 U.S.C. §§ 405(g); 1383(c).

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PLAINTIFF'S CONTENTIONS

Plaintiff alleges that the ALJ erred in: (1) discounting the credibility of Plaintiff's testimony and subjective complaints in support of her disability claim, and (2) finding an inconsistency between the Dictionary of Occupational Titles ("DOT") and the ALJ's holding that the Plaintiff can perform the jobs of small products assembler and garment folder. (Joint Stip. 3.)

DISCUSSION

A. The ALJ Did Not Err In Evaluating Plaintiff's Credibility

An ALJ's assessment of a claimant's credibility is entitled to "great weight." See Anderson v. Sullivan, 914 F.2d 1121, 1124 (9th Cir. 1990); Nyman v. Heckler, 779 F.2d 528, 531 (9th Cir. 1985). "[T]he ALJ is not required to believe every allegation of disabling pain, or else disability benefits would be available for the asking, a result plainly contrary to 42 U.S.C. § 423(d)(5)(A)." Molina v. Astrue, 674 F.3d 1104, 1112 (9th Cir. 2012). In order to determine whether a claimant's testimony is credible, the ALJ engages in a two-step analysis. Garrison v. Colvin, 759 F.3d 995, 1014 (9th Cir. 2014).

First, the claimant "must produce objective medical evidence of an underlying impairment 'which could reasonably be expected to produce the pain or other symptoms alleged.'" Bunnell v. Sullivan, 947 F.2d 341, 344 (9th Cir. 1991) (quoting 42 U.S.C.

1 § 423(d)(5)(A)(1988)). In producing evidence of the underlying
2 impairment, "the claimant need not produce objective medical evidence
3 of the pain or fatigue itself, or the severity thereof." Smolen v.
4 Chater, 80 F.3d 1273, 1282 (9th Cir. 1996). Instead, the claimant
5 "need only show that [the impairment] could reasonably have caused
6 some degree of the symptom." Id.

7
8 Second, once the claimant has produced the requisite objective
9 medical evidence, the "ALJ may reject the claimant's testimony
10 regarding the severity of her symptoms." Smolen, 80 F.3d at 1284.
11 Absent affirmative evidence of malingering, however, the ALJ may only
12 reject a plaintiff's testimony "by offering specific, clear and
13 convincing reasons for doing so." Id. In assessing a claimant's
14 alleged symptoms, an ALJ may consider: "(1) ordinary techniques of
15 credibility evaluation, such as claimant's reputation for lying,
16 prior inconsistent statements concerning the symptoms, and other
17 testimony by the claimant that appears to be less than candid; (2)
18 unexplained or inadequately explained failure to seek treatment or to
19 follow a prescribed course of treatment; and (3) the claimant's daily
20 activities." Id. An ALJ may also consider "the claimant's work
21 record and observations of treating and examining physicians and
22 other third parties." Id.

23
24 Here, the ALJ examined the Administrative Record and heard
25 testimony from Plaintiff. Based on the record, the ALJ determined
26 that Plaintiff had produced objective medical evidence of underlying
27 impairments that "could reasonably be expected to cause some of the
28 alleged symptoms." (A.R. 14.) However, the ALJ found that

1 Plaintiff's "statements concerning the intensity, persistence and
2 limiting effects of these symptoms are not entirely credible." (A.R.
3 14.)

4

5 The Court agrees with Plaintiff that some of the ALJ's reasons
6 for discounting her testimony were not clear and convincing. For
7 example, the ALJ found that Plaintiff's description of her symptoms
8 were "vague and general, lacking the specificity, which might
9 otherwise make it more convincing." (A.R. 14.) However, the ALJ
10 failed to specifically identify what testimony he found not credible.
11 See Reddick v. Chater, 157 F.3d 715, 722 (9th Cir. 1998) ("the ALJ
12 must identify what testimony is not credible and what evidence
13 undermines the claimant's complaints.") (quoting Lester v. Chater, 81
14 F.3d 821, 834 (9th Cir. 1995)). Moreover, contrary to the ALJ's
15 finding, Plaintiff testified that she "paces a lot, get[s] agitated,
16 and anxious," that she sees hallucinations and hears voices talking
17 to her, and that she thinks people are conspiring against her. (A.R.
18 31–32.) Plaintiff stated that when she gets depressed, she is sad,
19 paranoid, anxious, agitated, and borderline aggressive. (A.R. 33.)
20 Plaintiff also stated that she tried to kill her sister and another
21 male relative. (A.R. 35–36.) Based on the above mentioned
22 testimony, the Court finds that Plaintiff has described her symptoms
23 with sufficient particularity. Thus, this is not a clear and
24 convincing reason to discredit Plaintiff's testimony. See Reddick,
25 157 F.3d at 722.

26

27 The ALJ also discredited Plaintiff's credibility based on
28 Plaintiff's description of her daily activities. Orn v. Astrue, 495

1 F.3d 625, 639 (9th Cir. 2007) ("[D]aily activities may be grounds for
 2 an adverse credibility finding if a claimant is able to spend a
 3 substantial part of his day engaged in pursuits involving performance
 4 of physical functions that are transferable to a work setting.") The
 5 ALJ noted that Plaintiff indicated she could take care of hygiene and
 6 perform self-care, cook, do chores, and follow safety precautions.
 7 (A.R. 14.) The ALJ found that some of the physical and mental
 8 abilities and social interactions required in order to perform these
 9 activities are the same as those necessary for obtaining and
 10 maintaining employment. (*Id.*) However, the Ninth Circuit has
 11 reiterated that "[g]enerally, an ALJ should not consider activities
 12 like taking care of oneself, household tasks, hobbies, school
 13 attendance, club activities, or social programs to be substantial
 14 gainful activities." Lewis v. Apfel, 236 F.3d 503, 516 (9th Cir.
 15 2001). "One does not need to be 'utterly incapacitated' in order to
 16 be disabled." Vertigan v. Halter, 260 F.3d 1044, 1050 (9th Cir.
 17 2001) (citing Fair v. Bowen, 885 F.2d 597, 603 (9th Cir. 1989)).
 18 Here, Plaintiff's reported daily activities are not indicative of her
 19 ability to work and do not detract from her subjective complaints.
 20 Thus, the ALJ erred in discrediting Plaintiff because she was engaged
 21 in some limited activities of daily living.

22
 23 Nevertheless, an error by the ALJ with respect to one or more
 24 factors in a credibility determination may be harmless if the ALJ's
 25 "remaining reasoning and ultimate credibility determination were
 26 adequately supported by substantial evidence in the record." See
 27 Carmickle v. Commissioner, 533 F.3d 1155, 1162-63 (9th Cir. 2008);
 28 Robbins v. Soc. Sec. Admin., 466 F.3d 880, 885 (9th Cir. 2006)

1 (quoting Stout v. Comm'r, 454 F.3d 1050, 1055 (9th Cir. 2006)) (the
 2 Court will not reverse the Commissioner's decision if it is based on
 3 harmless error, which exists only when it is "clear from the record
 4 that an ALJ's error was 'inconsequential to the ultimate
 5 nondisability determination.'"). Here, the ALJ provided acceptable
 6 reasons for discrediting Plaintiff's testimony, each of which is
 7 fully supported by the record.

8
 9 First, the ALJ noted that the findings of Plaintiff's doctors
 10 regarding her mental impairments were inconsistent with her claims of
 11 continuing debilitating symptoms.¹ Although Plaintiff was
 12 hospitalized in February 2010 and September 2011 for attempting
 13 suicide, the treatment notes submitted by Christopher E. Berger, M.D.
 14 indicate that her symptoms of depression were subsequently controlled
 15 with medication. (A.R. 273–75.) Dr. Berger found that Plaintiff was
 16 "stable and improving" and Plaintiff reported feeling better after
 17 treatment. Moreover, her psychotic episodes were resolved, and she
 18 showed no signs of paranoia. (A.R. 273–75.) Dr. Berger even
 19 suggested to Plaintiff that she volunteer or do work as a caregiver.
 20 (A.R. 275.) On April 24, 2012, a physician at Norton Clinic
 21 confirmed these findings, concluding that Plaintiff's "depression

22 ¹ The ALJ may consider objective medical evidence in determining
 23 a claimant's credibility regarding subjective symptom testimony, as
 24 long as the ALJ does not reject such testimony solely because it is
 25 unsubstantiated by the objective medical evidence. 20 C.F.R. §§
 26 404.1529(c), 416.929(c); Rollins v. Massanari, 261 F.3d 853, 856, 857
 27 (9th Cir. 2001) ("While subjective pain testimony cannot be rejected
 28 on the sole ground that it is not fully corroborated by objective
 medical evidence, the medical evidence is still a relevant factor in
 determining the severity of the claimant's pain and its disabling
 effects.").

1 [was] under much better control with Dr. Burger [sic] & her new
 2 meds." (A.R. 296.) Furthermore, on October 12, 2012, Khushro
 3 Unwalla, M.D., found that Plaintiff was "adhering [to her
 4 medications] and seem[ed] to be doing well with the current
 5 treatment." (A.R. 306.)²

6

7 The ALJ also concluded that Plaintiff stopped working for
 8 reasons other than disability, noting that Plaintiff quit her job as
 9 a nurse in order to take care of her sick mother. (A.R. 14.) In
 10 assessing credibility, an ALJ may consider the fact that a claimant
 11 stopped working for reasons other than disability. See Bruton v.
 12 Massanari, 268 F.3d 824, 828 (9th Cir. 2001). Plaintiff argues that
 13 despite her decision to stop working in 2001, she developed a severe
 14 medical impairment years later when she was hospitalized in 2010 and
 15 2011. (Joint Stip. 6.) However, Plaintiff cannot demonstrate that

16 ² Plaintiff testified at the hearing that after her September
 17 2011 hospitalization, she also sought treatment with a psychiatrist
 18 until July 2012 and then a therapist on a weekly basis. (A.R. 25–26;
 19 30–31.) Plaintiff argues that the ALJ should have attempted to
 20 obtain the therapist and psychiatrist records which were not present
 21 in the medical record. Plaintiff is correct that the ALJ has a duty
 22 to fully and fairly develop the record and assure that the claimant's
 23 interests are considered. See Smolen v. Chater, 80 F.3d 1273, 1288
 24 (9th Cir. 1996). However, the therapist and psychiatrist were never
 25 mentioned in the disability reports Plaintiff completed, (see A.R.
 26 165–84; 188–203), and Plaintiff has neither suggested nor
 27 demonstrated that the missing records contain evidence that
 Plaintiff's disability cannot be controlled with medication and
 treatment. Warre v. Comm'r of Soc. Sec. Admin., 439 F.3d 1001, 1008
 28 (9th Cir. 2006) ("Impairments that can be controlled effectively with
 medication are not disabling for the purpose of determining
 eligibility for [disability] benefits."). Thus, the Court is not
 persuaded that the ALJ's failure to obtain these records requires
 reversal and remand.

1 these hospitalizations resulted from a severe medical impairment
2 which prevents Plaintiff from working. As Defendant notes,
3 Plaintiff's hospital records indicate that her chief complaint was
4 "stress of being unemployed." (A.R. 231.) Additionally, as the
5 Court noted, Plaintiff's mental status improved dramatically
6 following the hospitalizations. (A.R. 273, 296, 304, 306.)
7 Accordingly, substantial evidence supports the ALJ's credibility
8 determination.

9

10 **B. The ALJ's Holding That Plaintiff Can Perform The Jobs Such as**
11 **Small Products Assembler and Garment Folder Is Not Inconsistent**
12 **With The DOT**

13

14 The ALJ determined, based on the testimony of vocational expert
15 ("VE") Mary Jesko, that Plaintiff is capable of performing the jobs
16 of small parts assembler and garment folder, both of which are
17 available in significant numbers in the national economy. (A.R. 17–
18 18.) Plaintiff contends that there is a DOT inconsistency in the
19 ALJ's holding that the Plaintiff can perform these jobs, because the
20 ALJ determined in his RFC that Plaintiff's impairments will cause her
21 to miss work 1 to 2 times a month. (Joint Stip. 25.)

22

23 An ALJ may not rely on a VE's testimony regarding the
24 requirements of a particular job without first inquiring whether the
25 testimony conflicts with the DOT, and if so, why it conflicts.
26 Massachi v. Astrue, 486 F.3d 1149, 1152–53 (9th Cir. 2007). Here,
27 the ALJ asked the VE whether missing work 1–2 days a month would
28 change his testimony that Plaintiff could perform the jobs of small

1 products assembler and garment folder. (A.R. 40.) The VE responded
2 that 1-2 days "would be an acceptable degree of absence from the
3 workplace, so that would not have an adverse impact." (A.R. 41.)
4 The VE also testified that his testimony was consistent with the
5 Dictionary of Occupational Titles. (A.R. 40.)

6

7 Accordingly, the ALJ was entitled to rely on the VE's testimony.
8 See Bayliss v. Barnhart, 427 F.3d 1211, 1218 (9th Cir. 2005) ("A VE's
9 recognized expertise provides the necessary foundation for his or her
10 testimony."); Lair v. Colvin, No. 5:12-cv-00932-SP, 2013 WL 1247708,
11 *4 (C.D. Cal. Mar. 23, 2013) ("Because the VE testified that there
12 was no conflict between plaintiff's RFC and the DOT and because
13 Plaintiff's counsel did not question the VE regarding any alleged
14 inconsistencies between the DOT and plaintiff's RFC, the ALJ was
15 entitled to rely upon the VE's testimony.").

16

17 **ORDER**

18

19 For the foregoing reasons, the decision of the Commissioner is
20 affirmed.

21

22 LET JUDGMENT BE ENTERED ACCORDINGLY.

23

24 Dated: June 15, 2015.

25

26 _____
27 /s/ _____
28 ALKA SAGAR
UNITED STATES MAGISTRATE JUDGE